

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Appl. No. | : 10/826,596 | Confirmation No. | 1202 |
| Applicant | : Mark Zimmer | | |
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| TC/A.U. | : 2624 | | |
| Examiner | : Mia M. Thomas | | |
| Docket No. | : P3355US1 (119-0035US) | | |
| Customer No. | : 29855 | | |
| Title | : IMPROVED BLUR COMPUTATION ALGORITHM | | |

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed to request reconsideration of the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) for Patent No. 7,636,489 issued 22 December 2009. A fee for this Petition is filed herewith. Applicants believe that no additional fees are due in connection with this Petition. However, should any fees or refunds be due, the Office is authorized to charge or credit such fees or refunds to Deposit Account No. 501922, referencing attorney docket number 119-0035US.

Remarks begin on page 2 of this paper.

REMARKS

Applicants have received an Issue Notification and a Determination of Patent Term Adjustment under 35 U.S.C. 154(b), for issued Patent No. 7,636,489 with issue date 22 December 2009, for the above referenced application. The calculated Patent Term Adjustment (PTA) is indicated as 981 days. However, Applicants believe the calculated term adjustment should be 1650 days for the following reasons.

As currently codified, 35 U.S.C. § 154(b) provides three guarantees of patent term, two of which are at issue here. The first is found in subsection (b)(1)(A), the "[g]uarantee of prompt Patent and Trademark Office response." It provides a one-day extension of patent term for every day that issuance of a patent is delayed by a failure of the PTO to comply with various enumerated statutory deadlines: fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like. *See* 35 U.S.C. § 154(b)(1)(A)(i)-(iv). Periods of delay that fit under this provision are called "A delays" or "A periods." The second provision is the "[g]uarantee of no more than 3-year application pendency." Under this provision, a one-day term extension is granted for every day greater than three years after the filing date that it takes for the patent to issue, regardless of whether the delay is the fault of the PTO. ¹ *See* 35 U.S.C. § 154(b)(1)(B). The period that begins after the three-year window has closed is referred to as the "B delay" or the "B period". ("C delays," delays resulting from interferences, secrecy orders, and appeals, are similarly treated but were not involved in the patent applications underlying this suit.)

Wyeth v. Dudas, Civ. Action No. 1:07-cv-1492-JR, 2008 WL 4445642 D.D.C. affirmed in *Wyeth v. Kappos*, (Fed. Cir. 2010) decided 7 January 2010.

The pertinent dates for calculating the PTA for this case are as follows:

- 1) 4/16/2004 Application filing date;
- 2) 4/16/2007 three years from filing (start of B time calculation);
- 3) 5/18/2007 mailing date of first Office Action;
- 4) 12/22/2009 Issue date of Patent 7,636,489.

There are several categories of time calculation set forth in 37 C.F.R. 1.703 under subheadings a-g. The pertinent subheading in this instance are “a” (A-Time) and “b” (B-Time). Applicants note that A-Time and B-Time are not allowed to overlap.

A-Time Calculation

The time period set forth under 37 C.F.R. 1.703(a), A-Time, allows fourteen months from the filing date for the Office to issue a first Office Action. The 14 month date in this case was 6/16/2005 and the first Office Action was not mailed until 5/18/2007. The A-Time allocated before the first Office Action is calculated as the duration between 6/16/2005 (14 month date) and 4/16/2007 (start of B-time period). This duration is **669 days**. There are no other periods of A-Time to consider in this case.

B-Time Calculation

The time period set forth under 37 C.F.R. 1.703(b), B-Time, allows for 3 years pendency of an application subject to certain conditions which do not affect this case. In the instant case, the B-Time adjustment is represented by the duration between 4/16/2007 (start of B-Time period) and 12/22/2009 (Issue date of Patent). This time period represents **981 days**.

Conclusion

A-Time of 669 days plus B-Time of 981 days minus 0 days for delays attributable to Applicants, results in the correct calculation for PTA being **1650 days**. For the reasons stated above, Applicants respectfully request that the PTA be adjusted to **1650 days** and a Notice of Correction be issued.

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Respectfully submitted,

/William M. Hubbard/
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